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UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA

In re:)	Case No. 16-14459-LED
)	
Sunpower by Renewable Energy Electric, Inc.,)	Chapter 11
)	
Debtor.)	
_____)	

**STIPULATION REGARDING THE
ASSUMPTION OF EXECUTORY CONTRACTS WITH SUNPOWER
CORPORATION AFFILIATES AND MATTERS RELATING THERETO**

Sunpower by Renewable Energy Electric, Inc., the debtor and debtor-in-possession in the above captioned matter (the “**Debtor**”), and SunPower Corporation, Systems, a Delaware corporation, SunPower North America, LLC a Delaware limited liability company, and SunPower Corporation, a Delaware corporation (including their respective affiliates, collectively “**SunPower**”), by and through their undersigned counsel, hereby stipulate and agree as follows:

RECITALS

WHEREAS, on August 12, 2016 (the “**Petition Date**”), the Debtor filed its voluntary Chapter 11 petition pursuant to 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”). Since the Petition Date, the Debtor has been acting as a debtor-in-possession.

WHEREAS, SunPower manufactures residential solar panels, and the Debtor in turn originates and installs solar panels, which are leased to SunPower’s customers and owned by

1 SunPower.

2 WHEREAS the Debtor also provides customer service, installation design and the
3 physical installation of SunPower solar panels, in return for which SunPower pays the Debtor
4 fees as specifically described in contracts between SunPower and the Debtor; the Debtor also
5 purchases SunPower solar panels for the Debtor's own account.
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8 WHEREAS, since the Petition Date, the Debtor and SunPower have continued to
9 conduct business together in the ordinary course pursuant to the various agreements between
10 them, including that certain Residential Dealer Agreement dated February 6, 2017, it being
11 understood that the Debtor would seek Bankruptcy Court authority to assume the Debtor's
12 prepetition contracts with SunPower in accordance with Section 365 of the Bankruptcy Code
13 in connection with confirmation of the Debtor's plan of reorganization (the "**Plan**").
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16 WHEREAS, as of the date hereof, SunPower is owed \$560,365.45 for prepetition goods and
17 services provided by SunPower to the Debtor (exclusive of contingent, unliquidated claims, the
18 "**Pre-Petition Claim Amount**").
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20 WHEREAS, the Debtor desires to continue its business relationship with
21 SunPower, to assume its prepetition executory contracts with SunPower, and to
22 authorize its performance thereunder and with respect to post-petition transactions
23 with SunPower. As a consequence thereof, the Debtor has agreed, subject to
24 Bankruptcy Court approval, to repay the Pre-Petition Claim Amount over a ten-
month period as of the dates and in the amounts set forth in this Stipulation.

25 WHEREAS, subject to Bankruptcy Court approval of, and the Debtor's performance
26 under the terms set forth in this Stipulation, SunPower will provide the Debtor with a line of
27 credit for the purchase of SunPower solar panels and services in an amount not to exceed
28 \$200,000.00, subject to SunPower's standard borrowing terms and covenants.
29

30 **AGREEMENT**

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32 NOW, THEREFORE, the parties hereby stipulate and agree to the following:

1. SunPower's proof of claim in the Debtor's bankruptcy case, filed as claim

number 34 in the amount of \$525,172.17, is hereby amended in amount to \$560,365.45, and such claim shall be an “Allowed Claim” as that term is used in the Plan, in the amount of \$560,365.45, without need for filing an amendment to SunPower’s proof of claim (as so amended, the “**Allowed Claim**”).

2. The Debtor will pay the Allowed Claim to SunPower pursuant to the following payment schedule (without affecting the Debtor’s right to prepay such amount), with such payment to occur on or by the first day of each month:

<u>Date</u>	<u>Amount</u>
June 2017	\$30,000.00
July 2017	\$37,500.00
August 2017	\$45,000.00
September 2017	\$90,000.00
October 2017	\$90,000.00
November 2017	\$65,000.00
December 2017	\$42,500.00
January 2018	\$42,500.00
February 2018	\$52,500.00
March 2018	\$65,500.00
Total	\$560,500.00

If the Debtor fails to timely make any such payment, and without limiting any of SunPower’s other rights and remedies, at law, in equity, or per written agreement between the parties, SunPower will be entitled to offset such missed or late payment against any amount that SunPower (regardless of which SunPower entity serves as obligor) then owes the Debtor, which offset may be effected without need for relief from the automatic stay or other Bankruptcy Court approval.

3. SunPower will provide the Debtor with a line of credit for the purchase of SunPower solar panels and services in an amount not to exceed \$200,000.00, subject to SunPower’s standard borrowing terms and covenants, which include the Debtor’s agreement to exclusively purchase SunPower products.

1 4. The Debtor, as of the Effective Date of and as that term is defined in the Plan,
2 on behalf of itself and its affiliates, the estates and their respective successors, assigns and any
3 and all entities who may purport to claim by, through, for or because of them, will forever
4 release, waive and discharge all “claims” (as that term is defined in the Bankruptcy Code) that
5 any of them have or had against SunPower, whether known or unknown, either now accrued or
6 hereafter maturing, liquidated or unliquidated.
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9 5. Pursuant to the Plan, the Debtor will seek confirmation of its authority to enter
10 into and perform under that certain Residential Dealer Agreement with SunPower North
11 America, LLC, dated February 6, 2017, and to assume the Debtor’s prepetition contracts with
12 SunPower in accordance with Section 365 of the Bankruptcy Code, including those identified
13 in **Exhibit A** attached hereto.
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16 6. Provided the Plan complies with Sections 1125 and 1126 of the Bankruptcy
17 Code, and incorporates the terms of and is otherwise consistent with this Stipulation,
18 SunPower agrees to vote in favor of the Plan, as it may be amended from time to time.
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20 7. This Stipulation, together the contracts referenced herein, constitute the entire
21 agreement and understanding among the parties, and to the extent of any conflict between this
22 Stipulation and the Plan, the terms of this Stipulation will prevail.
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1 8. The Debtor will forthwith seek Bankruptcy Court approval of this Stipulation
2 by inclusion of its terms in the Plan, and will provide an advance copy of such Plan (as so
3 amended) for review and approval by SunPower, and no amendment or modification of this
4 Stipulation will be effective unless such amendment or modification is approved in writing by
5 the parties.
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8 Date: June 6, 2017

Date: June 6, 2017

9
10 /s/ Samuel A. Schwartz
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14 Attorneys for the Debtor

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17 Submitted by:

18 Schwartz Flansburg PLLC
19 By /s/ Samuel A. Schwartz
20 SAMUEL A. SCHWARTZ, ESQ. #10985
21 Attorneys for the Debtor
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